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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,253

05/31/2006

Hitoshi Yokoyama

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WASHINGTON, DC 20006-1021

EXAMINER

BADR, HAMID R

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,253	Applicant(s) YOKOYAMA ET AL.	
	Examiner HAMID R. BADR	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/31/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 2 is indefinite for “substantially”. It is unclear what is meant by substantially. It is not clear what the applicant regard as the invention.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wlodarczyk et al. (PL-176077; hereinafter R1)
5. R1 discloses a starter inoculum containing lactic acid bacteria which are known to be derived from sour leaven and yeast. After activation of the culture they are added to a mixture of rye and soybean flour and fermented for certain time at certain temperature. The starter inoculum can improve the quality of produced bread. (Abstract)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishigaki et al. (US 6,183,787; hereinafter R2) in view of Kato et al. (US 5,972,394; hereinafter R3).

8. R2 discloses a quality improver for producing bread comprising a lactic acid fermentation product of soy bean. (Abstract)

9. R2 discloses bread formulations by incorporating quality improvers for producing bread. R2 discloses the addition of protease into the formulations. The lactic acid fermentation product of product of soybean is produced by preparing the soybeans, adding the protease to the slurry and hydrolyzed for 30 minutes. Then a lactic acid starter is added and fermented for certain time at certain temperature. Bread is then produced by incorporating the quality improver into wheat flour. The amount of the improver is approximately 1.2 or 3 % by weight. (Col. 9, Examples 1-4, Table 1 and lines 25-40 and col.7, lines 48-54).

10. While R2 discloses the incorporation of a fermented soybean product into the yeast leavened bread dough as a quality improver, R2 is silent regarding the fermentation of soybeans with lactic acid bacteria and yeast simultaneously.

11. R3 discloses a method of preparing a fermented soybean milk comprising subjecting a soybean milk to fermentation with yeast and lactic acid bacteria and subjecting the resulting fermented soybean milk to a deactivation treatment to deactivate the yeast and bacteria by heat. (Abstract).

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12. R3 discloses *Saccharomyces cerevisiae* as the yeast and a group of lactic acid bacteria for the lactic fermentation. (Col. 3, lines 49-63).

13. R3 discloses that after adding the yeast and the lactic acid bacteria into the soybean milk, the milk undergoes fermentation.

14. Given that lactic acid bacteria of sour leaven are known in the art or baking, it is obvious that the lactic acid bacteria for the mixed fermentation of soybean milk can be derived from sour leaven as presently claimed depending on the desired end use.

15. It is noted that the pH for the propagation of yeast is between 4-5. Therefore, the limitation of claim 5 is obvious to those of skill in the art.

16. R3 discloses the heat treatment and deactivation of the fermented soybean milk. (Col. 4, lines 36-50).

17. R3 discloses during the fermentation, various substances including alcohol and lactic acid are produced and the flavor and the taste are simultaneously improved so as to obtain a fermented soybean milk which has a good flavor and a good taste. (Col. 3, lines 3-7).

18. R2 discloses the incorporation of a lactic fermentation product of soybeans into bread dough in order to improve the quality of bread. The quality of bread includes the aroma and taste and texture as well as resistance to staling. R3 teaches the mixed fermentation of soybean milk which can improve the organoleptic properties of the soybean product, therefore, it would have been obvious to follow the teachings of R2 and use the mixed fermentation product of soybeans as taught by R3. One would do so to improve the quality of the baked bread. Absent any evidence to contrary and based

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on the combined teachings of the cited references, there would be a reasonable expectation of success in incorporating the fermented soybean product into bread dough to impart functionality and flavor to the baked bread.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-T 5:30 to 4:30 (Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794

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